

*Before Muhammad Kamran Khan Mulakhail
and Naeem Akhtar Afghan, JJ*

ABDUL ZAHIR KHAN ACHAKZAI---Petitioner

versus

**DISTRICT AND SESSIONS JUDGE,
QUETTA/RETURNING OFFICER through
Chairman and 2 others---Respondents**

C.P. No.884 of 2015, decided on 19th October, 2015.

Pakistan Legal Practitioners and Bar Councils Act (XXXV of 1973)---

---Ss.13(1)(i) & 55---Pakistan Legal Practitioners and Bar Councils Rules, 1976, Rr.175-G, 175-H & 175-J [as inserted by Pakistan Legal Practitioners and Bar Councils (Second Amendment) Rules, 2013]--- Electoral list---Election of High Court Bar Association--- Petitioner was a practicing lawyer and candidate for the post of Vice President of

PLD

2016 Abdul Zahir Khan Achakzai v. District Balochistan 33
and Sessions Judge (Muhammad Kamrn Khan Mulakhail, J)

Balochistan High Court Bar Association but his nomination papers were rejected on the ground that his name did not appear in the voting list maintained by Balochistan Bar Council---Plea raised by petitioner was that his name was present in the voter list maintained by High Court Bar Association---Validity---For the purpose of authentication, the Roll maintained by Balochistan Bar Council prevailed over the roll/voter list compiled by former President/Secretary of High Court Bar Association---Place of practice of petitioner could only be determined according to the Provincial Roll---Name of petitioner existed in Provincial Roll of Zone (IV) while his place of practice in the voter's list of High Court Bar Association had wrongly been mentioned as place "Q"---High Court declined to interfere in the orders passed by Returning Officer which were unexceptional and nomination papers of petitioner were rightly rejected by him--- Petition was dismissed in circumstances. [p. 39] A & B

Hadi Shakeel Ahmed for Petitioner.

Baz Muhammad Kakar along with Abdul Basit (respondent No.2) for Respondents.

Nazim-ud-Din Advocate-General, Balochistan for the State.

Date of hearing: 15th October, 2015.

JUDGMENT

MUHAMMAD KAMRAN KHAN MULAKHAIL, J.---Through this petition following relief has been sought:

"It is respectfully prayed that the order dated 21.09.2015 passed by respondent No.1 may kindly be set aside and the nomination papers of the petitioner may be accepted by including his name in the list of validity [sic] nominated candidates for the post of Vice President, Balochistan High Court Bar Association, Quetta, in the interest of justice."

2. Brief facts of the petition are that the Appeal Committee (Balochistan) of the Pakistan Bar Council ("PBC") passed the order dated 28.08.2015, in its meeting held at Quetta, whereby after observing the inordinate delay of four (4) years for holding the election of High Court of Balochistan, Bar Association (hereinafter "HBA") the election schedule of the HBA was announced and initially 26.09.2015 was declared to be the day for holding elections, which on account of Eid-ul-Zoha vacations was further modified to 03.10.2015, which date has again been changed to 21.10.2015. On 2nd May 2013 the PBC in exercise of the powers conferred by the Sections 13(1)(i) (1d) and 55 of the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973)

PLD

issued a Notification No.S.R.O 335(I)/2013, whereby, certain new amendments have been inserted in Pakistan Legal Practitioners and Bar Councils Rules 1976, naming as Pakistan Legal Practitioners and Bar Councils (Second Amendment) Rules, 2013 ("Amended Rules 2013") whereby specific dates have been stipulated for holding the elections of District/Tehsil Bar Associations of the respective provinces as well as of the High Court Bar Associations by inserting Rule 175-G of the (Rules 2013), while by inserting the Rule 175-H, for the offices of the respective bar associations the length of practice of the Advocates has also been defined for each office. For the province of Balochistan four (4) seats of Vice President i.e. Quetta, Sibi, Makran and Loralai, while three (3) seats of members of the Executive Committee have also been increased; that in view of four zones of the Balochistan Bar Council ("BBC") one seat of vice president has been allocated for each zone; that the PBC has also requested the Hon'ble Chief Justice of the High Court of Balochistan to nominate the District and Sessions Quetta to act as the Returning Officer ("RO") for holding the elections. The request of the PBC has been acceded to and the District and Sessions Judge Quetta has been nominated as the RO according to the schedule prescribed by PBC; that the petitioner, who is a practicing lawyer and is enrolled as an Advocate of the High Court also submitted his nomination papers for the office of the Vice President Quetta but the respondent No.2, who was also contesting election for the same seat filed objections before RO against the nomination of the petitioner. The same were accepted vide order dated 21.09.2015 (hereinafter "the impugned order"), which is reproduced herein below:

"Objection has been raised that candidate is voter of Zoab [sic] group but has filed nomination papers for Quetta Vice-President, therefore his nomination papers are liable to be rejected. The objection sustains, therefore nomination papers are not accepted (rejected) being reserved seat.

3. Feeling aggrieved of the impugned order the petitioner initially filed an appeal before the Chairman BBC, which was returned with the endorsement that on account of forthcoming elections of the BBC, the Executive Committee of the BBC is not in existence. Whereafter the petitioner being remediless, filed the instant constitutional petition with the prayer to set aside the impugned order passed by the RO and to direct him to include the petitioner's name in the list of validly nominated candidates for contesting the elections for the seat of Vice President Quetta.

4. Mr. Hadi Shakeel Ahmed, Advocate for the petitioner contended that after filing the instant petition, vide this court order dated 23.09.2015 the petitioner has been allowed to contest the elections

subject to the outcome of the petition; that after passing of the interim order the petitioner is contesting the elections and the election process has already geared up and ballot papers have also been printed, in which the petitioner's name has been mentioned in the array of the candidates for the office of Vice President (Quetta); that though the candidature of the petitioner is subject to the outcome of the instant petition, however at this stage when the whole process of elections is at its peak, casting the petitioner at this stage would not be in accordance with norms of justice, rather the candidature of the petitioner can be assailed before the Election Tribunal after the elections; that the objections raised against the petitioner relate to mix questions of facts, which cannot be decided without recording evidence; that the petitioner's name appears at serial No.73 of the voters list maintained by the HBA in which his place of practice has clearly been written as "Quetta"; that the objections raised by respondent No.2 are based upon the Provincial Roll maintained by the BBC for the election of BBC; that the appearance of the petitioner's name in the Provincial Roll in which his place of practice has been mentioned as "Chaman" is not meant for election of the HBA; that HBA has not yet framed its own rules, therefore, the Provincial Roll maintained by the BBC elections does not debar the petitioner from contesting the election in the High Court Bar; that the list of eligible voters for the HBA was approved by the former office bearers, therefore, for all practical purposes and intents the petitioner would be considered as eligible voter of the High Court Bar and his place of practice mentioned therein shall be considered as final and the petitioner cannot be deprived from contesting election of Vice President (Quetta); that preliminary qualification for contesting the elections is existence of the name of the candidate in the voters list of the concerned area, which the petitioner fulfills, therefore, the impugned order being nullity and not supported by the prevailing rules is *void ab-initio*, which deserves to be set aside. He urged with vehemence that the RO be directed to include the petitioner's name in the list of validly nominated candidates for contesting the elections for the office of Vice President (Quetta).

5. Mr. Baz Muhammad Kakar, Advocate appearing for respondent No.2 contended that it is admitted on record that elections of the HBA are going to be held on the intervention of PBC; that the PBC being controlling and supervisory body of all bar councils of the respective provinces as well as of Supreme Court Bar Association including the High Courts, the District and the Tehsil level Bar Associations, rightly intervened under the compelling circumstances because the former office bearers of the HBA were holding the positions without having the mandate of the voters; that in pursuance of Amended Rules 2013 and subject to Rule 175-J, the president/Secretary of a Bar Association were authorized to prepare a list of eligible voters, which was further required

to be authenticated by the concerned Provincial Bar Council; that amendment in the length of practice for the offices of HBA has already been implemented, whereby, the length of practice for the office of the President HBA was enhanced from ten years to fifteen years, whereas the length of practice for other offices were also enhanced; that the said direction contained in the amended rules, have been followed in letter and spirit, therefore, the nomination papers of Mr. Ewaz Zehri, Advocate for the office of president were rejected due to lack of experience/length of practice; that the purpose behind creation of office of the Vice President on basis of zonal allocation was to ensure the representation of the Advocates of far flung and remote areas, that in order to determine the zonal allocation, the bifurcation of zones as provided by the Legal Practitioners and Bar Councils Act, 1973 has been adopted; that for all intents the zonal allocation of the office of the Vice President is meant to afford fair opportunity of enfranchise to the voters/advocates of the respective zones; that the petitioner cannot be allowed to retain his name in the Provincial Roll of zone (IV) in respect of Bar Council elections and to choose the candidature for the office of Vice President from Quetta Zone; that vide circular dated 12.09.2015 sufficient time was provided by the Advocate General Balochistan being the returning officer of BBC Elections to the Advocates to shift their names to the zone of their own choice till 02.10.2015; that about forty to forty eight lawyers/advocates after clearance of their dues have shifted their votes to the respective zones of their own choice; that the petitioner despite availability of sufficient time, did not choose to shift his name to Quetta zone; that subject to Rule 175-J of the Amended Rules 2013, the Advocate General Balochistan is under legal obligation to authenticate the name of petitioner and to determine his place of practice according to the Provincial Roll. While concluding his arguments learned counsel candidly offered that they will have no objection in case the petitioner wants to contest elections from his concerned zone according to his place of practice i.e. Chaman as mentioned in the Provincial Roll. He added that the said offer was also made before the RO at the time of scrutiny of the nomination papers rather the petitioner was offered to get his name shifted to Quetta Zone, whereafter he would be able to contest elections according to the provincial role. He urged with vehemence that printing of ballot papers cannot be taken as a refuge to violate the prevailing law and rules framed thereunder; that the petition being devoid of merits be dismissed.

6. During proceedings, the original voters list for the forthcoming Elections of Balochistan High Court Bar Association 2015-2016 was called from the office of Returning Officer and the same was confronted to learned Advocate General/Ex officio Chairman, Balochistan Bar Council ("AG"). Learned AG stated that the said list was provided to

him by some office bearer of Balochistan High Court Bar Association and he tallied the list with the roll of Balochistan Bar Council, whereafter he sent the said list to the Returning Officer (RO) after ascertaining the status of the voters enrolled as Advocates of High Court in the record of Balochistan Bar Council.

Learned AG stated that no covering letter was issued by him along with the voters list for RO nor did he put any signature on the said voters list.

With regard to particulars furnished in the voters list for the Elections of Balochistan High Court Bar Association learned AG relied upon the list of the Advocates maintained by the Balochistan Bar Council. Learned AG further stated that in the original record maintained by the Balochistan Bar Council at the time of applying for enrolment, the petitioner had mentioned his place of practice as "Chaman" and the same has also been mentioned in the voters list of the Balochistan Bar Council. However, in the voters list for the Elections of Balochistan High Court Bar Association for the year 2015-2016, the petitioner has mentioned his place of practice as "Quetta".

Learned AG further stated that after preparation of the voters list, number of Advocates appeared before him with applications for making correction with regard to their particulars, but no such application was filed by the petitioner before him nor the petitioner ever appeared before him for making any correction with regard to his particular i.e. his place of practice.

7. We have heard the learned counsel for the parties and have gone through the order passed by the appeal committee of the PBC. There is no denial of the fact that the Amended Rules 2013 have been promulgated on 3rd May 2013. On the strength of amended rules, the number of seats for the office bearers has been increased, while the length of practice has also been enhanced. The said mandate has been implemented and followed in letter and spirit.

The perusal of nomination form reflects that against each seat of the vice president, its respective zone has also been mentioned, while the Note-2, of the nomination paper further clarifies and mentions "8-Members of Executive Committee and 3-Members of Executive Committee from the Zone of Balochistan Bar Council", which reveals that the zonal allocation for the office of Vice President was adopted according to the zonal allocation of BBC. The purpose to increase the number of seats was to provide complete representation to the voters/lawyers of the far flung and remote areas of the province. Under the BBC Rules the participation in the Bar Council election is restricted according to zonal allocation. If the place of practice of a lawyer is not

mentioned in the relevant zone, he cannot contest/participate in the election from the said zone. Since, neither any new mechanism has been settled nor any other criteria has been introduced for allocation of zones in the HBA's elections, rather the zonal allocation of BBC has been followed, therefore, by no stretch of imagination a different analogy can be adopted for the zonal allocation in the HBA's elections. The place of practice mentioned in the Provincial Roll shall be deemed as correct and final for becoming a candidate and to determine the candidature for the office of Vice President of HBA from the respective zone.

8. During the proceedings the learned AG also produced the original enrolment file of the petitioner, which shows that in his application for enrolment as an Advocate of the lower court his permanent residence and place of practice is mentioned as "Chaman", more so in his application for enrolment as an Advocate of the High Court the petitioner mentioned "Chaman" as his place of practice, his affidavit appended with his enrolment application also states the same fact that his place of practice is "Chaman". It has also been brought in our notice by the learned AG that when sufficient time was granted to the voters/Advocates for shifting of their names to the place/zone of their own choice but the petitioner did not avail the said opportunity and decided to retain his name in zone (IV) of the BBC.

The learned AG Balochistan being Ex-officio Chairman of the BBC also acts as the returning officer of the BBC elections. The authentication of the voters list prepared by any of the association also rests with the Chairman of the BBC. On query by the court, learned AG categorically stated that he will stand by the particulars mentioned in the Provincial Roll instead of accepting the voters list provided by the former President/Secretary of the HBA. According to learned AG if the petitioner is allowed to contest election from the zone of his own choice, it will amount to open another Pandora box as few candidates have already been refused to participate in the election from the zone which has not been mentioned as their place of practice. Although, the whole Balochistan is an Electoral College in the upcoming HBA elections but the candidature from a particular zone is subject to place of practice of the candidate.

9. At this juncture it is worthwhile to observe that the office of vice president at provincial level, is also allocated to the Advocates of the Supreme Court of Pakistan in which electoral college consists of whole country but for the office of Vice President from the respective province, the candidature is restricted according to the Provincial Roll of the respective province. Same is the position in the election of BBC and only the member of a respective zone can contest the elections for the seat of that particular zone.

10. In view of above discussion it can safely be concluded that for purpose of authentication the Roll maintained by BBC prevails over the roll/voter list compiled by the former President/Secretary of the HBA. Moreover, in view of the statement made by the learned AG the place of practice of the petitioner can only be determined according to the Provincial Roll. Thus, since the petitioner's name exists at serial No.2 of District Killa Abdullah/Chaman in the Provincial Roll of zone (IV) (Group of District-IV) consisting upon Zhob-Loralai-Musakhail-Barkhan-Ziarat-Killa Saifullah-Killa Abdullah-Pishin, while his place of practice in the voter's list of HBA has wrongly been mentioned as Quetta, therefore, the petitioner's nomination papers have rightly been rejected by the RO vide impugned order, which being unexceptional does not warrant interference by this court.

The learned Advocate General has also informed us that ballot papers have already been printed in which the petitioner's name appears as candidate for the office of Vice President, Quena of the HBA, therefore, in order to avoid any confusion for the voters, it is directed that the name of petitioner be covered/crossed with black ink/black marker.

The petition is dismissed accordingly. The earlier interim order dated 23-9-2015 stands vacated.

MH/S/Bal.

Petition dismissed.